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Fixed For 24/4/2002
Before Hon'ble Rakhra ...
M.H / ~~H.P.~~ No. 44

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IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

Writ Petition No.671/2002.

PETITIONER: Office Reference
Yashwant Sinha.

Versus.

RESPONDENT: The State of Chhattisgarh.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.671/2002 (Reference)

Yashwant Sinha

Vs.

State of Chhattisgarh & ors.

O R D E R

Per Hon.Fakhruddin,J :

This petition has been registered suo motu as reference by this Court. Reply was called for and the State has filed the reply.

2. It is borne out from the reply that on 20-01-2002, while the Superintendent of Police, Jashpur was carrying on a Naxalite operation, suddenly during the operation naxalites attacked the police party and during the fight with the naxalites, Constable 484 Yashwant Sinha, the present petitioner, received a bullet injury on his right leg below the knee. The said Constable (hereinafter referred to as the Member of the Force) was seriously injured in the said operation. First aid was given to him by the Company Commander. Thereafter he was rushed to the Holy Cross Hospital, Kunkuri, Jashpur. It is contended that Orthopedic Specialist was not available there, therefore he was

given primary treatment and was rushed to Shishir Seva Kendra, Ranchi. It is also contended that on 21-01-2002, Dr. Amit Mukherjee operated upon the injured leg of the Member of the Force. It is stated that due care was taken and two employees of the Police department were attending him. For initial expenses, Rs.10,000/- was released by the Company Commander from the Mess Advance, which was available to the Company Commander. It is further stated that on 14-02-2002, Dr. Mukherjee discharged the Member of the Force and advised further bed rest. He was brought from Ranchi to Raipur by train and then he was sent to his home town at Kopra, Rajim.

3. The reply further goes to show that subsequently the Member of the Force was got examined in M.M.I. Hospital, Raipur and the Doctors advised for another operation. It is stated that the Commandant sanctioned an amount of Rs.15,000/- from the Mess Advance towards the expenses incurred during operation. During the operation, he was required to be given blood 'O Positive' and it was donated by Constable 353 Hukum Singh. On 06-03-2002, again he was operated upon and the Commandant was also present at the second operation. In the second operation, the blood was required. Constable 286 Mohd. Naseem and Constable 368 Uliyush Lakada donated the blood. It is also stated that a Head Constable and a Constable were attending him

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and Asst. Commandant Shri Avinash Sharma and Sub Major used to personally visit the hospital and supervise the working of the people attending upon the injured and used to report the matter to the Commandant. It is further stated that he was discharged from hospital on 18-03-2002. Reply further goes to show that on 07-04-2002, an information was received from the injured that the metal rod put on the right leg of him was to be recovered on 16/4/2002. He was required a sum of Rs.10,000/- and the department had assured that it would be made available. It is stated that the injured had incurred an expenditure of about Rs.35,000/- on his treatment and claimed the reimbursement. So far as the bills are concerned, the department informed that after the bills are received from M.M.I. Hospital, it is only thereafter the department will be able to process the matter for reimbursement.

4. The State has come-forward with the case that so far as financial assistance is concerned, unless and until the injured moves an application in writing and the bills are submitted, the department may not be able to render any financial assistance. It is stated that as per the rules prevailing, the injured person can, on providing a medical certificate, obtain an advance upto 80% of the approximate estimate upon the treatment. This would require the injured to move an application with proper documentary supports . Unless it is done, the police authorities would not be in

a position to render any monitory assistant to the injured. It is further stated in the reply that in the instant case if any further monitory assistance is required towards medical expenses and the injured has been asked to move an application in respect of the same along with medical certificate showing the rough estimate of the cost, that would be incurred and on the said application given by the injured he would be entitled for 80% of the said amount as advance for his medical treatment.

5. Shri Ravindra Shrivastava, Advocate General, Dr. N.K. Shukla, Addl. Advocate General, and Shri Sanjay K. Agrawal, Dy. Advocate General, appearing for the State submitted that it is a case where Shri Sinha, the Member of the Force, was a Member of the Naxalite Operation accompanied by the Superintendent of Police, Jashpur. He was on official duty. The naxalite problem in the State of Chhattisgarh and the adjoining States is such which is one of the problems requiring the attention of not only the respective States but also the Union of India, for which the Special Task Force is constituted. In the State of Chhattisgarh, the Members of the said Force are doing commandable job so far as naxalite problem is concerned. In the instant case, first aid was immediately provided to the Member of the Force, he was taken to the hospital at Kunkuri and as the Orthopedic Specialist was not available there he was rushed to Shishir Seva Kendra,

Ranchi, where the operation was conducted. But, yet the operation was not successful, he was again operated at M.M.I. Hospital at Raipur.

6. Constable Yashwant Sinha addressed the Court and submitted that he had to apply for loan from his G.P.F., which fact is not disputed by the department. The loan was granted but it took some time. The said amount was not enough. Then, he obtained the amount from his relatives. His father, who is a poor man, has also obtained the amount from his relatives.

7. Commandant of the Force present in the Court was asked regarding the situation. He submitted that he has joined recently. He submitted that the G.P.F. loan was applied for, which was granted. So far as financial assistance is concerned, as per rules it can only be given only after the bills are produced.

8 Learned counsel appearing as amicus curiae submitted that in the best hospitals like M.M.I., Appollo and others, the amount is required to be deposited first and thereafter the treatment starts. Sufficient fund has to remain in patient account and if the fund is not there, the treatment sometimes stopped and patient is discharged for want of funds. In some hospitals, even

when a person dies, dead bodies are not given unless the bills are cleared.

9. Let this matter be examined by the State Government and the Central Government.

10. The question which arises for consideration is whether a person who involved in a Naxalite operation as in the present case where the petitioner had shown gallantry risking his life and in spite of fire from the Naxalite side he was able to catch hold of the Naxalite, on whose the reward was there, and in that operation he was injured which is not disputed, why such a member of the force should not be provided with treatment at the State expenses.

11. Learned counsel appearing as amicus curiae state that while the prisoner in jail undergoing the sentence has a right to get the best medical treatment on State expenses, why the members of the force deployed for operations like the present one be not provided equally the best medical treatment at the State expenses. If immediate proper treatment is not given to the injured, then he may be physically disabled or some causality may arise. They further submit that if required the injured may be given best medical treatment and there should not be any

discrimination between a Constable and the Highest Officer of the Force forming the operation because they all are part of a team or a group. If highest officer is entitled to get the best medical treatment, then why the lowest officer is not entitled for such treatment. The lowest officer much more requires because his financial conditions are not such. His G.P.F. and other amount may not even be sufficient. It is the duty of the State to provide best medical treatment to the soldier, so that the killing instinct in him remains the same as it was. Learned counsel further stated that the persons involved in a naxalite operation have to be equipped with latest machines and weapons .

12. To keep the moral of the force high, State has to take certain actions and learned Advocate General assured that the State of Chhattisgarh is conscious of its responsibilities and would do utmost in the larger interest of the members of the force and specially in case like the present one.

13. At this stage, the petitioner submitted that in spite of the fact that he has received a bullet injury and is unable to walk, his moral is not down. He still has killing instinct. In fact while having tears in his eyes, he submitted what he is afraid of that he may be discharged from his service as an invalid person.

14. Though his moral is not down, even with this disability he wants to serve and combat. It is at this juncture, Shri G.C. Pandey and Shri Ashok Das Vaishnav, learned counsel appearing as amicus curiae, addressed the Court that to keep the moral of the force high, and in the matters like the present one where the member of the force has suffered injury and shown the courage combating with the naxalites, such persons should be provided best possible treatment at the State expenses, so that the persons engaged in the operation may devote themselves without bother that in case any mishap occurs, State is there to protect their lives or the lives of their dependants. It is contended by the learned counsel that unless the members of the force deployed for the operation have absolute confidence on the question of getting medical treatment, it may affect moral of the force and the operation would not be successful. They further stated that the naxalite problem is not confined to one State. It has its base in various States concerned like Chhattisgarh, Jharkand, Orissa, Andhra Pradesh, Madhya Pradesh, Uttar Pradesh, West Bengal and Bihar, for which not only the State Government but also the Union of India require attention. It is stated that so far as State of Chhattisgarh is concerned, out of 16 districts, 8 districts namely Korea, Sarguja, Raigarh, Jashpur, Rajnandgaon, Kanker, Bastar and Dantewada, are facing naxalite problem.

15. At this stage, learned Advocate General submitted that the State of Chhattisgarh in its bid to freed naxalite affected districts namely Korea, Sarguja, Raigarh, Jashpur, Rajnandgaon, Kanker, Bastar and Dantewada has launched massive combing operation. It is pointed out that the problem is not confined to this State but there are eight other States infested, namely, Madhya Pradesh, Andhra Pradesh, Bihar, Jharkhand, Orissa, West Bengal, Uttar Pradesh and Maharashtra. The force has become operational in some areas of the State. It is further pointed out that these naxalites are suspected to have links with different separatist groups. It is also pointed out that the Central Government is also conscious. Learned Advocate General very fairly stated that for source of operations against the naxalites in the area, joint police operations are required and for members of that joint police operations certain safe-guards have to be provided and one of them has to be best possible medical treatment facility to the members of the operation. . The State will also frame a policy in the matters of persons involved in naxalites operations. He however submitted that for all this, due help from the Union of India and the Ministry of Health is also required.

16. It is for the State of Chhattisgarh to take up the matter to the concerned department of the Central Government and this Court accordingly directs it to do so.

17. It is also pointed out by the Advocate General that in the naxalite infested districts, the land-mines are made and as a result of its explosion, police personnel are killed and injured. To combat the heavily armed naxalites, State of Chhattisgarh has taken substantial measures.

18. As stated by the learned Advocate General and appreciated by all, it is expected that in the matters of providing expertise medical facilities, State of Chahttisgarh shall be pioneer State. The State may issue instructions and may have direct arrangements with Military Hospitals widely for such force till the policy is framed.

19. Article 21 of the Constitution of India confers the protection of life and personal liberty, which reads as under :

> "21. No person shall be deprived of his life or personal liberty except according to procedure established by law."

Viewed in the context of the members of armed forces combating the heavily armed naxalites, this Articles is of much more importance.

20. In case of a government employee, the Apex Court in the case of State of Punjab and others vs. Mohinder Singh Chawla and others reported in 1997(2)SCC 83 has held that the right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. If the government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference whereat the government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the government servant. The Apex Court dealt with the matter in para 4 of the judgment, which reads as under :

> "It is an admitted position that when specialized treatment was not available in the hospitals maintained by the State of Punjab, permission and approval having been given by the Medical Board to the respondent to have the treatment in the approved hospitals and having referred him to the AIIMS for specialized treatment where he was admitted, necessarily, the expenses incurred towards room rent for stay in the hospital as an in-patient or an integral part of the expenses incurred for the said treatment. Take, for instance, a case where an in-patient facility is not available in a specialized hospital and the patient has to stay in a hotel while undergoing the treatment, during the required period, as certified by the doctor, necessarily, the expenses incurred would be an integral part of the expenditure incurred towards treatment. It is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide

health facilities. If the Government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference whereat the government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee. The High Court was, therefore, right in giving direction to reimburse the expenses incurred towards room rent by the respondent during his stay in the hospital as an in-patient."

21. The Apex Court even in a case of an ordinary workman employed in Industry, who suffered from ailment requiring treatment of specialized in nature, applying the relevant provisions of Part IV of the directive principles of State Policy and especially Article 42 of the Constitution of India making provisions for just and humane conditions of work and maternity relief, so also Article 43 of the Constitution of India provides for workers by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, has ensured safety and provided facilities and opportunities for health and vigor of the workman. The Apex Court has considered the matter in great detail in the case of Kirloskar Brothers Ltd. vs. Employees' State Insurance

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Corporation reported in AIR 1996 SC 3261, wherein the Apex Court has held as under :

> "In expanding economic activity in liberalized economy Part-IV of the Constitution enjoins not only the State and its instrumentalities but even private industries to ensure safety to the workman and to provide facilities and opportunities for health and vigour of the workman assured in relevant provisions in part IV which are integral part of right to equality under Article 14 and right to invigorated life under Article 21 which are fundamental rights to the workman. Interpretation of the provisions of the Act, therefore, must be read in the light not only of the objects of the Act but also the constitutional and fundamental and human rights to hereinabove."

22. The circumstances appearing on the record show that the rules provide reimbursement only when the person moves and application alongwith the documents and submits the bills. The facts and circumstances of the present case go to show that Constable comes from lower middle class family. He himself tried to apply for withdrawal of G.P.F. amount. As the same was not sufficient, he and his father obtained loan from their relatives to get treatment in the hospital.

23. Learned Advocate General, appearing for the State, appreciated the spirit of the petitioner and the killing instinct which he had and assured that so far as the amount which he has withdrawn from the G.P.F. is concerned, the same shall be paid to the petitioner. Learned Advocate General further assured that the State would provide him best medical treatment, wherever it is available, so that he is again able to perform his duties as efficiently as he was able to do prior to receiving the injury and the State has no plans to invalidate him. Commandant present in the Court also assured that he will treat him as a member of his family. He stated that he wanted to give the best possible medical treatment to the injured but the rules and regulations have come in his way.

24. Let the State examine the entire matter. The operations are being conducted by the force and in such operations the State has to be prepared for it. While combating, the members of the force may get injured and God-forbid casualty may also occur. With these old rules and regulations which have been referred to and stated in the reply of the State and further referred to by the Commandant in the address may be good for normal but in a situation like the present one they do not appear to be useful. To expect a person who is injured to apply for G.P.F. and arrange the money from borrower and then get specialized treatment, which is

required, is something, which in fact may result in deprivation of life. State has not only to equip with latest arms and ammunitions including the land-mines resistant vehicles but also to have keep the funds with the Commandant or such other Officer deemed fit and proper for best possible medical treatment. So far as the present case is concerned, the facts that emerged from the reply filed by the Government themselves go to show that the amount had to be arranged by the Constable either from withdrawal of G.P.F. or from borrowing. He has to pay it first in those hospitals and if the required amount is not deposited the treatment does not proceed and because of all that wrangle or complication results in deprivation of the best medical treatment. The facts of the present case are illustrative one and they may not be exhaustative. A situation can be visualized where a Constable is just at the beginning of career is deployed in operation duty and his G.P.F. or other assets may not be enough. Even if an injured person is having the property but he may not get the customer, some one has to arrange money on his behalf. There may be a problem where a person had suffered head injury and was not conscious, in that situation how he could get the loan from G.P.F. or withdraw money even lying in some deposits here and there. State faced with naxalite problem has to consider all this and this Court hopes that the highest functionaries of both

Central or the State would look into the aspect of the matter as its their function.

25. So far as the present petitioner is concerned, it is directed that the best medical treatment, wherever it is available, be provided to him on the State expenses and the amount which has been incurred by him on his treatment be reimbursed to him. The similarly situated injured persons shall also be taken care of in the like manner till the policy is finalized and after the policy is finalized they shall be dealt with as per the policy framed. If situation warrants for treatment to the specialized hospitals, the appropriate government may issue necessary instructions. The Commandant or the area in-charge may have the funds or the suitable instructions are there to the hospital to treat the injured and not to discontinue the treatment because of the paucity of funds. The State being welfare State shall do the needful.

26. Subject to the directions and observations made above, this petition is disposed of accordingly.

27. Before parting, this Court appreciates the assistance rendered by Shri Ravindra Shrivastava, Advocate General, Dr. N.K. Shukla, Addl. Advocate General and Shri Sanjay K. Agrawal, Deputy Advocate General, so also Shri G.C. Pandey and Shri

Ashok Das Vaishnav, learned counsel who appeared as amicus curiae. This Court also appreciates the concerned correspondent and the newspaper for taking the cause in right perspective.

28. Certified copy as per rules and the copy of this order be given to the parties concerned for compliance.

Sd/-
Fakhruddin
Judge

9/5/2002

Hande/-